

Honorable Mayor Liccardo and Council members
City of San José
200 East Santa Clara Street
San José, CA 95113

Subject: Letter from Public – City Council Meeting on May 19, 2015 Agenda Item 3.9 - Amendment to the Agreements with Sharks Sports and Entertainment Related to the Extension of the Management of SAP Center

Dear Mayor and Council members,

1) Legal Background

CALIFORNIA CONSTITUTION - ARTICLE 1 - DECLARATION OF RIGHTS

http://www.leginfo.ca.gov/const/article_1

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

San Jose Municipal Code Section Chapter 12.21 - OPEN GOVERNMENT Part 1 - NAME AND PURPOSE

https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=TIT12ETOPGPR_CH12.21OPGO

12.21.010 - Name and purpose. A. This chapter will be referred to as the "open government ordinance." The city is committed to open and honest government and strives to meet the community's expectations consistently by providing excellent service, in a positive and timely manner, and in the full view of the public.

B. The city council appointed the sunshine reform task force to provide recommendations on a number of matters related to open government. The recommendations of the sunshine reform task force included tools to increase public access to information, enhance neighborhood and community participation, and ensure government accountability.

C. The specific recommendations of the sunshine reform task force, as adopted by the city council, are contained in that certain consolidated open government and ethics resolution adopted simultaneously with this chapter and referred to as "the consolidated open government and ethics resolution."

12.21.420 - Complaints regarding unauthorized meetings.

A. Any person may submit a complaint alleging that a meeting or closed session meeting has been held or is threatened to be held by members of any legislative body of the city in violation of the requirements of the Brown Act, this chapter, or the consolidated open government and ethics resolution, to the rules and open government committee.

C. If the complaint is filed with the rules and open government committee:

1. The rules and open government committee will consider the complaint as part of its regular meeting agenda. If the committee determines that additional consideration is warranted, it will set a schedule for additional hearing(s), which will be conducted in accordance with the brown act and the additional rules of procedure as described in the consolidated open government and ethics resolution.

D.If the legislative body of the city takes no action within the thirty-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the rules and open government committee may refer the matter to the city attorney or the city council for further action.

E.The city's failure to follow these administrative procedures will not result in the invalidation of any action taken by the city.

(Ord. 29460.)

RESOLUTION NO. 77135 A Resolution of the Council of the City of San

Jose Consolidating Open Government and Ethics Provisions and Repealing Various Resolutions and City Council Policies www.sanjoseca.gov/DocumentCenter/View/35087

2.2.10 Public Subsidy

A. Public Subsidy. A "Public Subsidy" means a provision of economic value by the City and other related entities to a private entity for purposes beneficial to the public, such as the operation of a business or event within San Jose, but for which the City or other related entities do not directly or indirectly receive goods or services in return for that expenditure.

B. Provision of Economic Value. For the purposes of this Section, "provision of economic value" means:

1. Cash payments;
2. Loans below the interest rate the City earns on its investment portfolio, known as "the City's portfolio rate", or loan guarantees;
3. Land or access to land at prices below fair market value;
4. Buildings or access to buildings at prices below fair market value as determined by either the City's purchase price, appraisal or replacement value (purchase price may be used for "unique" structures for which the City does not want to do a costly appraisal); or

5. Waiver or reduction of fees or taxes.

C. Goods or Services. For the purposes of this Section, "goods or services" include products or services provided at prices below market value. For example, if the City pays businesses or nonprofit organizations to make affordable housing units or discounted rides on buses or shuttles available to residents, it is purchasing the discount and not offering a Public Subsidy.

MATRIX OF PUBLIC MEETING REQUIREMENTS

Cost Benefit of Public Subsidy (\$1 million or more) City Council Information Memo 28 days before Council Meeting and Staff Reports 10 days before

References: Gift of Public Funds and Public Purpose

a) - **CALIFORNIA CONSTITUTION ARTICLE 16 PUBLIC FINANCE SEC. 6.**

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever;

http://www.leginfo.ca.gov/.const/.article_16

b) California Government Code Section 8314 - Gift of Public Funds

8314. (a) It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

(b) For purposes of this section:

(1) "Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

(3) "Public resources" means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.

(4) "Use" means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the state or any local agency for which a monetary value may be estimated.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=08001-09000&file=8310-8317>

2. Why is the above legal background and your rights important for residents and voters of San Jose to understand ?

San Jose, as a Charter City, can give “any gift of public money or thing of value”, such as a tax subsidy, discounted city fees, below market leases, or below cost city services “for a Public Purpose”.

Currently some of the “any gift of public money or thing of value” are summarized in Annual Summary of Funding to Community Based Organizations

<https://www.piersystem.com/external/content/document/1914/2164870/1/05-16-14-OED.pdf>
but many are not so the Council and residents do not know the total amount.

Many of the “gifts of public money or thing of value” that are given to non profits many residents will support if the knew about the gifts since the gifts go mostly to community organizations who help people in need – homeless, abused people, etc. Other gifts provide tax subsidies or incentives to grow San Jose city property or sales tax revenue in a reasonable time period (immediately or 5-7 years) which increases San Jose’s general fund revenue to pay for essential city services

Other gifts or rezoning of desirable retail or commercial land to residential possibly produce the opposite result reducing city tax revenues or jobs while currently 70-80,000 + residents leave San Jose a “jobs / city revenue poor city” to work in other Santa Clara County “jobs / city revenue rich cities” **but we do not know since their is no Annual Summary of gifts with analysis of benefit to city or residents**

3) Neighborhoods Commission as part of it’s mission makes budget recommendations to Mayor and Council which they approved at Wednesday, May 13th public meeting among other recommendations the following was recommended :

" As a “Charter City”, it is legal for Council to give such gifts, if done “for the public purpose”.
We recommend that the City Auditor be asked to produce an annual report for the public that lists all these rezonings, the names those who received the benefits, and the public purpose.

We recommend that the report also include a list of other gifts, such as waived or reduced city fees, tax subsidies, below-market leases, etc., given to for-profit or non-profit organizations.”

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4) City Council Agenda – May 19, 2015 Agenda Item 3.6 - Amendment to the Agreements with Sharks Sports and Entertainment Related to the Extension of the Management of SAP Center.

On Tuesday, May 12th at Council Meeting and at Wednesday May 13th Rules and Open Government Meeting

I made verbal comment to Council and the next day to Rules and Open Government that city had

- 1) not complied with noticing requirement for large tax subsidy as required by open government ,
- 2) Staff report did not included consultants reports about comparing Other Arenas facilities and financial and reports about improvements to SAP Arena and possible new arena referenced in Agenda item

3) Agenda item of significant community interest are normally doen in evening not afternoon session

Recommend That Mayor and Council consider deferring discussion of City Council Agenda – May 19, 2015 Agenda Item 3.6 - Amendment to the Agreements with Sharks Sports and Entertainment Related to the Extension of the Management of SAP Center to an evening session in early June so that public can review consultant reports and attend the Council meeting

Mayor Liccardo and Council had an thoughtful and excellent discussion about the difficult issue of commercial to residential conversions and the negative impacts on San Jose Jobs to housing balance and city service s and city budget at May 12th Council meeting

Look forward to the same thoughtful and excellent discussion about SAP Arena Amendment in June

Sincerely

Ed Rast

Former Chair, City of San Jose Sunshine Reform Task Force

Honorable Mayor Liccardo and Council members
City of San José

Re: Amendment to the Agreements with Sharks Sports and Entertainment Related to the Extension of the Management of SAP Center

Dear Mayor and Council members:

If you've looked at the new terms of the proposed agreement, you know the numbers are pretty grim for San Jose and exceedingly generous to the Sharks. Indeed, it looks more like a check off list of the Sharks wish list than a negotiated agreement. For the City, it can be summarized as pay much more for much less. Indeed: in the short term (the next 3 years), pay \$5.5M more and get \$4.25M less; in the medium term, pay \$12.95M more and receive \$52.5M less. The cumulative shortfall to San Jose is \$75.2M.

We're paying the Sharks to stay, and they're only committing to 7 more years. Maybe that's lucky. When you include the bond payments still being paid for the construction of the Arena, San Jose in the best case will be losing \$8M per year, even after counting sales and hotel tax revenue. This is not fiscal responsibility.

The justifications given for all the concessions granted to the Sharks are that the Arena is old, and that there is potential competition for the Sharks. However, both of these arguments are pretty weak and superficial if you look a little closer.

The Arena is old.

OK, if 22 is old, but what's wrong with it? We're not really told. Yes, the roof needs fixing, and the City as the landlord should do that. But then why does the rent also get reduced to nothing? And why should the City pay \$2.3M a year into a fund to finance revenue enhancements for the Sharks, when the City gets no share of any increased revenue?

The Sharks are going to leave!

Where is the CSL report that supposedly supports this fear? It's not in the material provided, and the City has not responded to a request for it. Is this a violation of disclosure rules?

Just a little common sense reduces this threat. For example, one of the faint shadows that the City is frightened of is that the Sharks will move to the not yet existent or approved San Francisco Warriors Arena. This is ludicrous. The Sharks are not going to move to some other team's building and give up their very healthy concert and events business. There are more than 100 non-Sharks event versus just 40 Sharks games each year at the Arena. How likely are the Sharks to walk away from that robust South Bay market?

Council should take a hard, clear eyed look at this proposed agreement. Reject it as unnecessarily generous, and send it back to negotiation.

Here are some other questions Council should ask about this agreement:

- Why is the City prohibited from raising any taxes or otherwise getting additional revenue from its own building?
- With the parking related provisions in this agreement, is the city is taking on the risk of providing (and paying for) parking, and/or constraining potential development in the area around the Arena? What's the potential cost of these constraints?
- Why the hurry to make a deal now? There are still years to go on the existing agreement, and any San Francisco Arena, etc. are years away at best.
- Why are the Warriors willing to pay for a SF Arena themselves; while Sharks get the San Jose Arena for free (plus subsidized improvements)?
- With the changes to the Ice Center deal, is San Jose taking on future interest rate risk?
- What are the restrictions on the use of money in the Ice Center Revenue Fund? How else could this money be used?
- In connection with the \$6M transfer from the Parking fund:
 - Does SARA need to agree to spending money on parking lot debt service instead of on its other currently unmet obligations? What other candidates are there for this money, and why is the Arena the best choice?
 - How else could the City use the money in the Parking Fund? Wording in the agreement refers to "fewer resources for rehabilitation and improvement of other City assets in the Downtown". What other Downtown assets are being neglected?
 - Will the state have a role in reviewing and approving this change in SARA's obligations?

Thank you.

Marc Morris